

FIRST APPEAL NO. 93 OF 1998

Shri Biku Custa Gaonkar,
agriculturist, aged 52 years,
r/o Curdi, now at Wade of
Sanguem Taluka, Goa.

.... Appellant

Versus

1. Narayan Arjun Gaonkar,
2. Somnu Shirputto Gaonkar,
(since deceased), by his
legal representatives:
 - a) Smt. Malcuma Gaonkar,
 - b) Smt. Dulu Saguna Gaonkar
and her husband,
 - c) Shri Saguna Gaonkar,
 - d) Shri Gunu Somnu Gaonkar
and his wife,
 - e) Smt. Kamlavati Gunu
Gaonkar,
 - f) Smt. Bhagu Surya Velip
and her husband,
 - g) Shri Surya Mahadeo
Velip,
 - h) Shri Govind Somnu
Gaonkar and his wife,
aged 30 years,
 - i) Smt. Dayavanti Govind
Gaonkar,
 - j) Shri Gajo Somnu Gaonkar
and his wife,
 - k) Smt. Sugandabai Gajo
Gaonkar,
 - l) Miss Audu Saguna Gaonkar,
aged 20 years, unmarried,
 - m) Master Barkelo Saguna
Gaonkar, aged 15 years,
minor, and

3. Shri Arjun Narayan Gaonkar,
all r/o Tolsai, Kurdi of
Sanguem Taluka, Goa. Respondents.

Shri Shivan Dessai, advocate for the appellant.

Shri R. G. Ramani, advocate for the respondents.

CORAM : S. A. BOBDE, J.

DATE : 30th July, 2004

ORAL JUDGMENT

This Appeal is against the Judgment dated 30th December, 1997, of the Additional District & Sessions Judge, South Goa at Margao, by which the learned Judge has awarded compensation of Rs.2,695.48 p. in respect of plot nos.342 to 352 to the respondents, i.e Narayan Arjun Gaonkar and the heirs of one Somnu Shirputto January.

2. For the purpose of Selaulim Irrigation Project at Kurdi village, land was acquired by an Award dated 29th December, 1972. An amount of Rs.2,695.48 p. was awarded in favour of the appellant Bicu Custa Gaonkar. The respondent Narayan Arjun Gaonkar filed Civil Suit No.28/77 against Bicu Custa Gaonkar and the said Land Acquisition Officer, Selaulim Project. The Court of Civil Judge, Senior Division, Quepem, passed an order restraining the Land Acquisition Officer from making payment of compensation to Bicu Custa Gaonkar. On this direction of the Court, the Land Acquisition Officer referred the matter to the District Court, Panaji, for adjudication. The Reference Court, after hearing the evidence and after perusing the documents, has come to the conclusion that the

appellant has no right whatsoever to 1/8th share in the property known as "Tolsoi Nocodbab" through Pondo Gaonkar.

3. The appellant claimed through one Pondo Gaonkar. He admitted that Pondo Gaonkar had two brothers Arjun and Shirputto. Pondo died issueless. The respondent Narayan Arjun Gaonkar is the son of Arjun and Somnu is the son of Shirputto. The Court has observed that since Pondo died issueless his 1/8th share devolved on Arjun and Shirputto. The Court observed that the appellant has failed to establish how he is related to Pondo Gaonkar in any manner. In fact, the appellant claimed that his name is Custa Narayan Gaonkar and his grand-father's name is Narayan Gaonkar, but he does not know the name of the father of his grand-father. Moreover, these names, i.e. Custa Narayan Gaonkar and Narayan Gaonkar have no connection whatsoever with Pondo Gaonkar in whose 1/8th share the applicant staked a claim.

4. Shri Shivan Dessai, learned counsel for the appellant strongly urged that it must be inferred that the appellant Bicu Custa Gaonkar had a share in the property of Pondo Gaonkar, which was acquired, because according to the learned Counsel, the appellant had filed a Civil Suit in the year 1979 in respect of the property "Tolsoi Nocodbab" and had prayed for an injunction restraining the forest contractor from cutting trees. According to the learned counsel, since the defendants had entered into a compromise with the

appellant, it shows sufficient interest of the appellant in the property. This submission cannot be accepted since nothing is pointed out to show that the suit related to the land which is acquired, i.e. plot nos. 342 to 352. Moreover, the mere fact of a compromise would not show a relationship with Pondo Gaonkar from whose 1/8th share the appellant claims. The lower court has rightly observed that the appellant failed to get his name entered in the survey record, particularly since the acquired land stood in the name of the respondents.

5. The learned Reference Court has also relied on the matrix certificate which shows that the share of Pondo in the property "Tolsoi Nocodbab" is 1/8th and the respondents have inherited this 1/8th share of Pondo through his brothers, namely Arjun and Shirputto. The survey records show that the respondents are the occupants of 1/8th share of Pondo.

6. Relying on the above evidence, the Court has held, and in my view rightly, that the respondents alone are entitled to compensation and not the appellant.

7. Shri Dessai, learned counsel for the appellant, further submitted that an inference is liable to be drawn from the fact that the appellant had an interest in the acquired land, since his brothers were given alternate plots at Wade. According to the learned counsel it is admitted

by the respondents that alternate plots were given to those persons whose lands were acquired. However, nothing is brought on record to show that the appellant's brothers were given alternate plots in lieu of the acquisition of lands in question in this case. Shri Ramani, learned counsel for the respondents points out that the appellant's brothers were in cultivating possession of the paddy fields of Ramnath Devasthan at Kurdi. That land was submerged for the Selaulim Irrigation Project and that is why the alternate lands were granted to the appellant's brothers.

8. In this view of the matter, there is no merit in the appeal which is hereby dismissed.

S. A. BOBDE, J.

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